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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th September, 2008

No.9810-li-1(J)-15/2007/LE.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st July, 2008 in Industrial Disputes Case No. 20/2007 of the Presiding Officer, Labour Court, Jeypore to whom the Industrial Dispute between the Management of M/s. Regulated Market Committee, Kandhamal, Phulbani, and their Workman Shri Bipra Charan Digal was referred for adjudication is hereby published as in the Scheduled below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE,
KORAPUT,

INDUSTRIAL DISPUTE CASE NO. 20 OF 2007

Dated the 31st July, 2008

Present: Shri G.K. Mishra, O.S. J.S. (Junior Branch),
Presiding Officer,
Labour Court, Jeypore,
Koraput.

Between: The Secretary,
M/s. Regulated Market Committee
Kandhamal,
At/p.O.- Phulbani,
Dist-Kandhamal .. First-Party Management
Versus
Its Workman,
Shri Bipra Charan Digal,
At-Pipudidei,
P.O.-Keonjhar,
P.S.-Tikabali,
Dist-Kandhamal .. Second-Party Workman

Under Sections: 10 & 12 of the Industrial Disputes Act, 1947.

Appearances :

<u>For the Management</u>	.. None.
For the Workman	.. Self.
Date of Argument	.. 24-07-2008.
Date of Award	.. 31-07-2008.

1. The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section (10) of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 12527 (5), dated the 17th November, 2007 for adjudication of the following disputes.

SCHEDULE

“Whether the action of the Management of M/s. Regulated Market Committee, Kandhamal, Phulbani in refusing employment to Shri Bipra Charan Digal with effect from 1st February 2001 is legal and/or justified ? If not, what relief Shri Bipra Charan Digal is entitled to ?”

AWARD

2. This case seems to have been originated out of the reference submitted by the Government for determination of an Issue regarding the propriety as well as legality of the termination entertained by the Management in respect of the Workman and for otherwise relief to be granted in consequence thereof.

3. The Management though have filed W.S in order to rebut the claim of the Workman having failed to appear in the Court on the date fixed inspite of the notice served on him, the case was set *ex parte*. During *ex parte* hearing, the Second Party Workman appears to have given a detailed account of the factum under which circumstances he was terminated from the service. As it is evident from the materials the Workman was engaged as a Clerk under the First Party Management and continued as such from 1st May 2000 to 31st January 2001, on the date on which he was terminated from the service in the manner of disallowing him from continuing in the service. Dis-continuance from service at the behest of the Management amounts to termination of service. The nature of service as ordained by the Second Party Workman is likely to be permanent in nature as no condition of service appears to have been contained or enumerated to that effect. Once a person was employed in service right is accrued in order to sustain his livelihood. Though right to work is not a fundamental right as envisages the constitution but right to livelihood being emanated from the right to work can be guaranteed as a fundamental right. Right to work has no meaning without any right to livelihood. Once process of livelihood is accrued by a person he can not be subsequently deprived of save and except by procedure established

by the law. Therefore, the Industrial Disputes Act, 1947 gives ample protection to the employees for the right to livelihood provided under circumstance befitting to the condition of service. The duty cast on the employer is to comply the mandatory provision contained in the Act before resorting to any process of depriving such employee by way of termination from the service.

4. The Workman seems to have performed his duty for more than nine months continuously without any break. It is the obligation on the part of the employer to give notice before depriving any employee from the right to livelihood or provide notice pay as well as if possible any compensation for adequate loss of service. There being no positive compliance of the necessary requirement as per law any dis-engagement or termination from service will be considered to be illegal and in-operative as per law. The Management having illegally terminated the employee from the service acquired permanently without due compliance of the mandatory provision and the termination having been considered to be illegal, the Workman is entitled to be reinstated in the service and with full back wages. Issues are answered accordingly.

ORDER

5. The Award is passed on contest. The Management is directed to reinstate the Workman in service with payment of full back wages.

Dictated and Corrected by me.

G.K. Mishra, O.S. J.S. (Junior Branch),
 Dt. 31-07-2008
 Presiding Officer,
 Labour Court, Jeypore,
 Koraput.

G.K. Mishra, O.S. J.S. (Junior Branch),
 Dt. 31-07-2008
 Presiding Officer,
 Labour Court, Jeypore,
 Koraput.

By order of the Governor

K.C. BASKE
 Under-Secretary to Government